

PETROLEUM TANK RELEASE COMPENSATION BOARD
MINUTES
Teleconference
Business Meeting
January 28, 2008
Department of Environmental Quality
Last Chance Gulch Building Room 112, 1100 North Last Chance Gulch
Helena, MT

Board members in attendance by telephone were Theresa Blazicevich, Greg Cross, Karl Hertel, AJ King, Steve Michels, and Roger Noble. Also in attendance were Terry Wadsworth, Executive Director, and Pam Collins, Board attorney.

Presiding Officer Cross called the meeting to order at 10:02 a.m.

Approval of Minutes

Mr. King moved to accept the minutes of the November 19, 2007 Board meeting as written. Mr. Noble suggested that “equipment manufacturer” be substituted for “equipment dealer” at page seven, paragraph five. Mr. Hertel seconded. **The motion was unanimously approved.**

Mr. Noble moved to accept the minutes of the December 7, 2007 teleconference Board meeting as written. Ms. Blazicevich seconded. **The motion was unanimously approved.**

Claim Adjustments – Michel’s Exxon, Kalispell, Fac #15-02330, Rel. #4587

Mr. Wadsworth reminded the Board that at the November Board meeting the Board voted to determine the release eligible, because the owner had an operating permit and was operating in accordance with §75-11-509, MCA. However, because the Department of Environmental Quality Enforcement Section was considering an enforcement action against the owner, and the Department had begun an investigation into the events surrounding the release, the Board voted to table the decision about reimbursement percentage, and to suspend payment of any claims until the next scheduled meeting. The Department investigation has not been completed. The Board staff is recommending that the matter remain tabled until the scheduled March meeting. In addition, the staff is recommending that the claims remain suspended until the matter is resolved.

Mr. Hertel moved to leave the matter on the table. Ms. Blazicevich seconded. Mr. Noble indicated that he will abstain from the vote. Mr. King abstained from the vote as well. **The motion was approved.**

Eligibility Ratification

Mr. Wadsworth informed the Board of the eligibility applications before the Board. The staff recommends twelve sites be determined eligible (see table below).

Board Staff Recommendations Pertaining to Eligibility From Nov 9, 2007 thru January 17, 2008				
Location	Site Name	Facility ID #	DEQ Release # Release Year	Eligibility Determination – Staff Recommendation Date
Polson	Former Pack Lumber	99-95008	4418 Jan 2005	Eligible – 11-15-07
Great Falls	Auto Service Center	07-08809	4598 10/1/07	Eligible – 11/20/07
Worden	Farmers Union Oil Company	56-02326	4560 2/26/07	Eligible – 11/20/07
Bozeman	Kwik Way 32	16-05094	4599 10/12/07	Eligible – 11/28/07
Billings	Big Sky Lift Truck	56-01096	2530 2/13/95	Eligible – 12/3/07

Table continued . . .

Board Staff Recommendations Pertaining to Eligibility From Nov 9, 2007 thru January 17, 2008				
Ronan	Johns Fuel Farm Inc	24-07437	4594 8/22/07	Eligible – 12/14/07
Missoula	Missoula Cartage Co Inc	32-01348	4563 3/20/07	Eligible – 12/14/07
Billings	Western Sugar Plant	56-00773	3256 10/10/97	Eligible – 12/20/07
Billings	Quality Concrete Co	56-06137	4583 5/8/07	Eligible – 1/11/08
Kalispell	Dept of Military Affairs	15-13373	4494 5/30/06	Eligible - 1/14/08
Billings	Prestige Toyota	56-07473	4597 10/12/07	Eligible – 11/5/07
Laurel	Pelican Truck Plaza Inc	56-0626	4553 1/9/07	Eligible – 1/14/08

Mr. Noble moved to accept the staff recommendations. Mr. King seconded. **The motion was unanimously approved.**

Claims over \$25,000

Mr. Wadsworth presented the Board with the claims for an amount greater than \$25,000 reviewed since the last Board meeting. (See table below). There are five claims totaling \$216,637.22.

Presiding Officer Cross commented that a significant portion of the costs for these claims is for monitoring, and reiterated his concern that too much is being spent on monitoring.

Dennis Franks, AJM, remarked that he has seen a drastic reduction in the amount of monitoring being conducted over the past two or three years.

Mr. Wadsworth noted that, in the case of these claims, much of the monitoring is associated with remediation systems, either new or enhanced.

Sandi Olsen requested that the Board clarify its generic concerns about groundwater monitoring. If the Board wants cuts across the board in all areas of monitoring, that has very different implications than if reductions are made in the amount of post-remediation groundwater monitoring. She asked if the Board could clarify what is the core issue.

Location	Facility Name	Facility ID#	Claim #	Claimed Amount	Adjustments	Co-pay Met with this claim	**Estimated amount to be reimbursed
Helena	Uticks Service Station	25-02301	20070827C	\$38,992.00	\$3,133.81	X	\$21,853.36
Livingston	Former East End Conoco	34-07597	20071023D	\$34,820.79	\$182.00	X	\$25,516.57
Condon	CHS Cardtrol and Bulk Site	99-95029	20071030I	\$35,037.41	\$6,325.56		\$28,711.85
Columbus	Town Pump Inc	48-08691	20071106A	\$71,379.04	-0-		\$71,379.04
Judith Gap	Judith Gap Bulk Plant	99-05005	20071217A	\$36,407.98	-0-	X	\$27,389.15
Total				\$216,637.22			\$174,849.97

Ms. Blazicevich moved to ratify the claims. Mr. Noble seconded. **The motion was unanimously approved.**

Weekly Reimbursements

Mr. Wadsworth presented to the Board for ratification the summary of weekly claim reimbursements for the weeks of November 14, 2007 through January 16, 2008. (See table below). There were 334 claims, totaling \$1,909,631.47. He

pointed out that there were also 16 zero reimbursement claims included in the request for ratification. One of these was for Allen Oil, five for Nick Fullerton Architects, and ten claims were for the Ronan Shop. All three of those releases were determined not eligible for reimbursement from the fund at previous meetings.

<u>WEEKLY CLAIM REIMBURSEMENTS</u> January 28, 2008 BOARD MEETING		
<u>Week of</u>	<u>Number of Claims</u>	<u>Funds Reimbursed</u>
November 14, 2007	41	\$359,442.74
December 5, 2007	33	\$191,516.45
December 12, 2007	11	\$204,593.76
December 19, 2007	48	\$246,550.23
January 2, 2008	52	\$490,296.09
January 9, 2008	105	\$205,613.37
January 16, 2008	44	\$211,618.83
Total	334	\$1,909,631.47

Mr. Noble remarked that there were approximately thirty claims, each just less than \$25,000, for soil excavations at the Grain Growers and Nash Brothers releases in Scobey. He noted that there had been a similar group of such claims ratified at the last meeting as well. He asked if there was something the Board could do to change the way these claims are addressed.

Mr. Wadsworth noted that if contractors were required to submit their claims by task, all the excavation costs would have been submitted in one claim. However, there is nothing in law or rule that requires contractors to submit costs by task. He suggested that the Board could review work plans for which the tasks were above a specified dollar amount. The Board would then have an opportunity to comment on the project before the work was done. He indicated that the staff had had an opportunity to review the cost per yard in the work plans for the Scobey sites, and that the costs in the plans were considered reasonable. However, as is often the case with a soil excavation, the actual costs were significantly higher than the costs estimated in the work plans because the volume of soil removed was greater.

Mr. King suggested that if the aggregate cost of multiple claims on a site over a specified period of time exceeded a certain dollar amount, those claims could all be combined into one claim. Ms. Blazicevich indicated that she agrees with the thought of combining claims, especially if they are on the same work plan and done in the same week or two week period. She wants to avoid consultants breaking things into more than one claim just to avoid the \$25,000 review by the Board.

With respect to the two Scobey sites, Presiding Officer Cross asked how the decision was made to conduct the soil excavations and what priority was assigned to the sites. Ms. Blazicevich suggested the staff send a letter to the owner/operator when their reimbursement reaches \$750,000. Mr. Hertel and Mr. Noble suggested sending the letter when the reimbursement reaches \$500,000.

Dennis Franks, AJM Inc., suggested that any letter sent should include a reminder to the owner/operator that they may be responsible for third-party damages over and above the \$1 Million limit of the Board's coverage.

The Board directed Mr. Wadsworth to prepare a draft letter including those elements, have it reviewed by legal counsel and modify the Petro database to allow it to generate the letter, as needed.

Scott Gestring, Petroleum Technical Section, told the Board that six months ago the section members prioritized the sites for which soil excavation was determined to be the preferred remediation option. The two sites in Scobey, Grain Growers and Nash Brothers, were the two highest priority sites due to risk factors present. Free product was present in the hydrant system for one of the sites, and at the other site highly contaminated soil was in contact with the water line. Test pits and soil borings had been conducted before the excavation was done.

Mr. Noble moved to ratify the weekly reimbursements as presented. Mr. Michels seconded. **The motion was unanimously approved.**

2009 Legislation

Mr. Wadsworth stated that the three main questions concerning proposed 2009 legislation are: (1) what does the Board want to change, (2) Does the Board want to create a second fund to handle found tanks, and (3) does the Board want to address all its issues in one bill, or divide them into more than one bill? If multiple bills are to be drafted a decision needs to be made on which issues should be addressed in each bill.

As requested by the Board at the December 2007 meeting, the Board staff prepared draft legislation containing the following items: (1) Single-wall tanks – costs split 80%/20%, with the Fund paying 80% for tanks with a UST permit or inspected and found to be compliant with AST requirements; (2) Double-wall tanks – costs split 85%/15%, with the Fund paying 85% for tanks with a UST permit or inspected and found to be compliant with AST requirements; (3) "all other" petroleum storage tanks, including heating oil tanks, would receive 50% of \$500,000; (4) heating oil tanks are removed from eligibility for the fund; (5) a quarter cent per gallon increase in the fee; (6) increase in the fund floor from \$4 Million to \$6 Million, and an increase in the fund ceiling from \$7 Million to \$10 Million.; (7) language concerning inspection and compliance requirements for AST eligibility; and (8) language concerning co-mingled plumes.

Tom Livers addressed the Board and indicated that the Department is not seeing any support for a fee increase in the Administration. The Administration is anticipating a slowing economy in the next session. He acknowledged that there is a need for a fee increase, but indicated that the Petro Fund is not DEQ's biggest concern and therefore is not willing to push for a fee increase. He informed the Board that Senator Wanzenried had suggested a working group be set up between the Environmental Quality Council (EQC) and the Legislative Finance Committee. The work group includes Senator Story and Representative Dickenson from the EQC and Representatives Ripley and Hiner from the Legislative Finance Committee. The group will be looking at challenges the Petro Fund faces, and potential solutions to those challenges.

Mr. Noble acknowledged DEQ's reluctance to support a fee increase and urged DEQ to work more diligently with the Board staff to find ways to mitigate the costs that are being incurred in cleanup of petroleum releases.

Mr. Livers acknowledged that DEQ did not act as quickly as it might have to readjust the prioritization system, but remarked that things are moving forward and resources are being directed at the highest priority matters at this point. DEQ hopes the Board will begin to see reduced demands against the Fund.

Mr. Noble applauded DEQ's efforts with regard to the priority system. He suggested that DEQ consider putting low priority sites on hold until the fund is in better condition.

Mr. Livers agreed that DEQ must recognize that funds are limited and ensure efforts are directed to the highest priorities. DEQ must also be cognizant of its statutory limits and constraints.

On behalf of the Board, Presiding Officer Cross acknowledged the efforts DEQ has made with regard to site prioritization and reduction of monitoring. He noted that the parties also recognize there is still a great deal of work to be done, but that all parties are working together to try to make the prioritization process work more efficiently. The Board appreciates DEQ's efforts.

Mr. Wadsworth provided the Board a more detailed summary of the draft proposed legislation. With regard to ASTs, the PTRCB staff is proposing a self-inspection program and that sites would need to be in compliance with current laws and rules in order to be eligible for the fund. At the moment, the Fire Marshall requires a facility to be in compliance with Fire Marshall's laws and rules in effect at the time the facility was installed, not the current laws and rules. It is considered necessary to provide AST owners the opportunity to come into compliance.

Mr. Wadsworth provided the Board with a graphical representation of the tank types covered by the Fund, and asked the Board to consider the type of coverage, if any, the Board wishes to provide for each type. For instance, does the Board want to remove heating oil tanks from the Fund? If the legislature is not willing to remove them from coverage, perhaps the Board would reduce the amount of coverage offered on such tanks. The current proposal removes tanks that were properly closed in place from coverage by the Fund. He stressed that it is no longer acceptable to close a tank in place. He reminded the Board that some tanks are required to have federal financial responsibility.

Mr. Wadsworth stated that Ronna Alexander, Petroleum Marketers Association, asked him to present the Association's comments. The Association feels that there is no need to use the co-pay as an incentive for owners and operators to upgrade their tank systems to double walled, because the new Energy Act requires all new systems to be double walled.

The Association supports removal of heating oil tanks from the Fund, though they are not sure that would be feasible in this legislature. They do not support changing the co-pay to an 80/20 split. If changes are made to the Department's processes, the Association will support a fee increase and co-payment adjustment. The Association also supports the staff's proposal concerning AST inspections as a requirement for eligibility.

With regard to coverage to be provided to a tank that was properly closed in place, the Association has concerns about removing such tanks from coverage. Despite using a closure permit and proper procedures, there may still be contamination because the closure didn't catch all of it. The Association does not support removing those tanks from coverage by the Fund.

Dennis Franks concurred with the Petroleum Marketers that tanks properly closed in place should still be covered by the fund.

Bill Rule, UST Program, explained the financial responsibility requirements of the UST laws and rules. The Board covers a much larger universe of storage tanks than the UST program regulates. The Board covers all petroleum storage tanks, including farm and residential tanks installed before 1995, while the UST program only regulates USTs, not including those farm and residential tanks. There is also a group of tanks that are defined as USTs, but are not subject to financial responsibility requirements. In addition, found and closed tanks present a particular difficulty. The UST program has distinguished in rule between an inactive tank and an out-of-service tank. An inactive tank is one for which the UST program has been notified, in writing, that the tank is inactive. Inactive tanks that are compliant should be eligible, even if they do not have an operating permit. Out-of-service tanks are those not in use, but about which the UST program has not been notified.

Mr. Wadsworth stressed to the Board that there is a large group of tanks not regulated, but covered by the Board, most notably farm and residential tanks and hydraulic lift tanks. Currently, if it's a PST it has the potential to become eligible for the fund. Does the Board want to consider removing coverage from some tank categories and limiting the coverage of others, to limit the Fund's potential liability. He discussed possible changes to co-payments and total reimbursements. He presented remediation cost statistics on various tank categories to assist the Board in evaluating possible changes to its reimbursement structure. He noted that the legislature, while unwilling to completely remove a category from coverage, may be willing to cap the coverage of certain tank categories. He noted, statistically, it would be better for Fund solvency to increase the co-pay to 50% of the first \$50,000 than to go to an 80/20 split of all costs on a release.

Mr. Franks proposed an 80/20 split for the first \$50,000 or \$70,000, then change to a different payment scheme.

Mr. Hertel moved to convene a work group meeting during the week of February 11, 2008 for the purpose of providing information to the Board for a conference call Board meeting on 2009 legislation, to be held on February 25, 2008. Mr. King seconded. **The motion was unanimously approved.**

Fiscal Report

Mr. Wadsworth presented the fiscal report through December 31, 2007. He noted that the \$1 Million that the Board borrowed has been used to pay claims. There is roughly \$1 Million in claims still waiting to be paid. He also stated that the obligation strategy is assisting in directing funds towards high priority sites.

Board Attorney Report

Ms. Collins presented the attorney's report. She provided an update on the Town Pump Dillon case. The Supreme Court did come down with a decision in the case on January 22, 2008. The Court held that the Board properly applied the version of the eligibility for reimbursement statute that was in effect at the time the release was discovered, rather than the version of the statute in effect at the time reimbursement was sought. It was a victory for the Board. With the ruling in that case, there will be movement soon on the Hightower property, which was stayed until the Town Pump case was decided.

BOARD ATTORNEY REPORT				
Location	Facility	Facility # & Release #	Disputed/ Appointment Date	Status
Boulder	Old Texaco Station	22-11481 Release #03138	Eligibility 11/25/97	Dismissal Pending because cleanup of release completed.

BOARD ATTORNEY REPORT - continued				
Thompson Falls	Feed and Fuel	45-02633 Release #3545	Eligibility	Case was stayed on 10/21/99.
Eureka	Town & Country	27-07148 Release #03642	Eligibility 8/12/99	Hearing postponed as of 11/9/99.
Butte	Shamrock Motors	47-08592 Release #03650	Eligibility 10/1/99	Case on hold pending notification to Hearing Officer.
Whitefish	Rocky Mountain Transportation	15-01371 Release #03809	Eligibility 9/11/01	Ongoing discovery. No hearing date set.
Lakeside	Lakeside Exxon	15-13487 Release #03955	Eligibility 11/6/01	In discovery stage.
Helena	Noon's #438	25-03918 Release #03980	Eligibility 2/19/02	Case stayed.
Belt	Main Street Insurance	07-01307 Release #3962		Eligibility tabled 6/25/01 currently Insurance coverage
Dillon	Town Pump #1	01-08695 Release #4144	Eligibility – contested 03/07/05	Case fully briefed in MT Supreme Court. Awaiting court decision.
Great Falls	On Your Way	07-09699 Release #3633	Adjustment to future claims	Hearing requested 2/15/07 Awaiting identification of attorney
Lewistown	On Your Way	14-09853 Release #3790	Eligibility contested	Hearing requested 2/15/07 Awaiting identification of attorney
Whitefish	Stacey Oil - Don Gray	15-04428 Release #1034	Adjustment to future claims	Hearing requested 2/15/07 Awaiting identification of attorney
Silver Gate	Hightower property	56-14109 Release #4274	Eligibility contested 5/29/07	Hearing requested 5/29/07. Hearing stayed until Supreme Court rules in Dillon matter
Havre	Cenex Supply & Marketing	21-07467 Release #826	Eligibility contested 8/14/07	Scheduling Order signed 8/28/07. Hearing set for 7/21/08
Kalispell	City Service West	15-02330 Release #1208	Eligibility Contested 12/6/07	Hearing requested 12/6/07 Awaiting identification of attorney

Board Staff Report

Mr. Wadsworth pointed out that in 2006 roughly 16% of the eligibility applications received were declared ineligible. So far, none of the applications received in 2007 have been declared ineligible, though 13 are still pending a final determination.

He noted that as of January all but one of the priority 1 work plans that were available for obligation had been obligated. Since the first week in January, four new priority 1 work plans were created.

Mr. Wadsworth and Ms. Olsen both commented that the prioritization system seems to be working well for their staffs. Ms. Olsen also commented that the Department is still working on reclassifying the priority 1 designation to further refine their classification.

Petroleum Technical Services Report

Mr. Trombetta informed the Board that Mr. Dan Kenney was hired as supervisor for the section.

He gave a brief explanation of the various types of monitoring that are conducted throughout the life of a release. He identified five types of monitoring: investigation monitoring, monitoring conducted to help design the selected cleanup system, operational maintenance monitoring conducted during actual cleanup to ensure that the system is achieving its goals, confirmation sampling to ensure the cleanup effort has succeeded, and long-term monitoring or long-term natural

attenuation. He noted that DEQ has drastically reduced the amount of monitoring of some types of sites, and indicated he will provide the Board with a briefing paper describing the changes to its monitoring regimes.

Public Forum

There were no comments from the public

The meeting adjourned at 12:24 p.m.

Greg Cross – Presiding Officer